IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1578 OF 2006

Ramjan Mohammad Usuf Kokani ..Petitioner
Vs.
Atul Vijay Madan and anr. ..Respondent

Mr. P.M. Pradhan for petitioner.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 02, 2007.

P.C.:

1. Heard Mr. Pradhan the learned counsel for the petitioner-accused. The Criminal Case Nos.1506, 2181 and 2182 of 2005 instituted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the accused filed an application at Exh.30 praying for exercising powers under Section 219 of Cr.P.C. and clubbed all the cases together on the ground that the offence was similar i.e. dishonour of cheques and the cheques were issued from the same transaction and that too within a period of less than 12 months. The learned Magistrate by his order dated 14/6/2006 was pleased to reject the application. The

accused, therefore, challenged the said order in Criminal Revision Application No. 262 of 2006 and the same came to be dismissed by the learned 4th Ad-hoc Additional Sessions Judge at Nashik on 18/7/2006. Hence, this petition under Article 227 of the Constitution.

2. The complainant had filed say to the application and brought to the notice of the learned Magistrate that on 20/3/2006 the cases were listed for cross-examination of the complainant and the application was filed belatedly. The complainant stated that he may be puzzled if the cases are clubbed. The learned Magistrate noted that the case was for examination-in-chief and the apprehension of the complainant was found reasonable. The revision court in its order noted that the powers under Section 219 of Cr.P.C. are discretionary and it is not mandatory that in each case the Magistrate is required to club the cases. It noted that in all the three cases plea was recorded, examination-in-chief of the complainant was also on record by way of an affidavit and, therefore, the accused had good opportunity to

defend each case specifically which would also enable the court to decide the requirements and more particularly procedural requirements in each case separately. Cause of action in each case arose on different dates and notices were issued intimating the dishonour of cheques on different dates.

3. Undoubtedly, the power under Section 219 of Cr.P.C. is a discretionary power and if in a given set of cases the learned Magistrate does not find it proper to exercise this discretion in favour of the accused, that cannot be a reason by itself to interfere under the supervisory powers of this court more so when the revision court also has considered the plea of the accused and held against him.

4. Hence the petition is rejected summarily. Trial is expedited.

(B.H. Marlapalle,J.)